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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

COUNTY OF FRESNO, et al.,

Plaintiffs and Respondents,

v.

EDGAR LOPEZ,

Defendant and Appellant.

F064552

(Fresno Super. Ct. No.
11CEFS03045)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Fresno County. Jamileh Schwartzbart, Commissioner.

Edgar Lopez, in pro. per., for Defendant and Appellant.

No appearance by Plaintiffs and Respondents.

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* Before Gomes, Acting P.J., Franson, J. and Peña, J.

Appellant Edgar Lopez appeals from an order of the Fresno County Superior Court setting the amount of child support appellant must pay for the support of his minor child. Appellant alleges the trial court wrongly failed to utilize his actual income when calculating the proper support amount. For the reasons set forth below, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On July 20, 2011, a complaint was filed seeking support for appellant's minor child, who had been born December 10, 2010. A hearing on the matter was held on December 13, 2011. At that time, a proposed support amount of \$183 per month, plus arrears, was adopted by the court. In calculating this amount, the court considered evidence "from Fresno Craigslist job postings," the parties' "income & expense forms," and four different guideline calculations. Taking this evidence into account, the court determined appellant's income should be imputed as "2/3 full time minimum wage earnings."

Appellant objected to this calculation and asked for a continuance to obtain counsel. A continuance was granted until January 17, 2012. However, appellant did not obtain counsel and, finding no good cause for a further continuance, the trial court finalized the previously calculated support order.

This appeal timely followed.

DISCUSSION

Appellant, proceeding in propria persona, argues his actual income at the time of the order was limited to unemployment payments which did not exceed \$280 per month. He notes that the court received and rejected two potential support calculations based on this income level, which suggested monthly child support in the amount of \$16 and \$17. While appellant admits evidence was submitted to the trial court regarding potential minimum wage jobs available to appellant, he contends he had applied for those jobs and been rejected and, due to his criminal history, cannot in fact find any work. Accordingly,

appellant contends the court should have ordered child support consistent with his actual income.

Finding no statewide issue in appellant's arguments, the Attorney General's Office elected not to file a respondent's brief. And no response was filed by the obligee in this matter. However, because we find no abuse of discretion on the record and argument presented, we affirm the trial court's order.

Standard of Review and Applicable Law

"We review an order establishing or modifying child support based upon earning capacity for an abuse of discretion." (*In re Marriage of McHugh* (2014) 231 Cal.App.4th 1238, 1247 (*McHugh*)). "To the extent the appellant challenges the trial court's factual findings, we review the findings for substantial evidence, considering the evidence in the light most favorable to the party who prevailed in the trial court." (*Brothers v. Kern* (2007) 154 Cal.App.4th 126, 134 (*Kern*)).

"California has implemented a 'statewide uniform guideline' for determining child support according to a complex algebraic formula based on the parents' incomes and custodial time with the child. [Citations.] The formula amount is rebuttably presumed to be correct; the court may depart from it only upon a finding, by a preponderance of the evidence, that one of five enumerated factors pertains." (*In re Marriage of Smith* (2001) 90 Cal.App.4th 74, 80-81.) "Among other things, the statute gives the court the discretion, in applying the guideline formula, to impute income to a parent based on his or her 'earning capacity,' in lieu of considering the parent's actual income." (*Id.* at p. 81.) "Although '[s]ome early cases held that imputation of income may only occur where the court finds the parent in question was deliberately trying to avoid his or her child support obligations,' '[t]his interpretation no longer prevails—recent decisions of the Courts of Appeal now recognize a finding of bad faith is no longer a prerequisite: "As long as ability and opportunity to earn exists, ... the court has the discretion to

consider earning capacity when consistent with the child or children's best interests.” ’ ’ ’
(*Kern, supra*, 154 Cal.App.4th at p. 135.)

The Trial Court Did Not Abuse Its Discretion

In this case, the trial court received evidence regarding appellant's financial position, along with evidence showing that minimum wage jobs were available within Fresno County. Considering this evidence, the trial court concluded two-thirds of the value of a full-time minimum wage job should be imputed to appellant. While appellant argues the jobs offered to show employment were unavailable to him due to his criminal history, he does not argue that no minimum wage jobs were available. As such, the trial court's determination that some portion of a minimum wage job could be imputed to appellant does not run contrary to the evidence submitted. (See *McHugh, supra*, 231 Cal.App.4th at p. 1247 [“The parent seeking to impute income must show that the other parent has the ability or qualifications to perform a job paying the income to be imputed and the opportunity to obtain that job, i.e., there is an available position. The parent seeking to impute income, however, does not bear the burden to show the other parent would have obtained employment if it had been sought.”].) Given the availability of work at a minimum wage for which appellant was qualified, the trial court did not abuse its discretion in relying upon a portion of that income to determine appellant's support obligations under the statutory formula.

DISPOSITION

The order is affirmed.